

Nos. 25-406, 25-567

IN THE

Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
Petitioners,

v.

AT&T, INC.

Respondent.

VERIZON COMMUNICATIONS INC.,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.
Respondents.

**On Writs of Certiorari to the
U.S. Court of Appeals for the Fifth Circuit and
U.S. Court of Appeals for the Second Circuit
BRIEF OF CTIA – THE WIRELESS ASSOCIATION,
NCTA – THE INTERNET & TELEVISION
ASSOCIATION, AND USTELECOM – THE
BROADBAND ASSOCIATION AS *AMICI CURIAE* IN
SUPPORT OF VERIZON AND AT&T**

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FEBRUARY 25, 2026

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TABLE OF CONTENTS

	Page
INTRODUCTION AND INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT	5
I. The Communications Act’s Enforcement Mechanism Is Unconstitutional Because It Authorizes Civil Penalties Without Any Meaningful Opportunity For A Jury Trial.....	5
A. Legal Consequences Foreclose A Meaningful Opportunity For A Jury Trial.....	7
B. Practical Consequences Foreclose A Meaningful Opportunity For A Jury Trial.	13
C. The Data Confirms There Is No Meaningful Opportunity For A Jury Trial.....	17
D. Without A Meaningful Opportunity For A Jury Trial, The Statute’s Enforcement Scheme Is Unconstitutional.....	18
II. The Communications Act’s Enforcement Mechanism Is Unconstitutional Because It Does Not Guarantee A Jury Trial During The Relevant Suit At Common Law.	21
A. The Statute Is Unconstitutional Because Forfeiture Proceedings Are Distinct Suits At Common Law.....	21
B. The Statute Is Unconstitutional Because It Does Not Guarantee A Jury Trial.	24
CONCLUSION	25

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Alexander v. Sandoval</i> , 532 U.S. 275 (2001).....	22
<i>AT&T Corp. v. FCC</i> , 323 F.3d 1081 (D.C. Cir. 2003).....	3
<i>Axon Enterprise, Inc. v. FTC</i> , 598 U.S. 175 (2023).....	24, 25
<i>Bennett v. Spear</i> , 520 U.S. 154 (1997).....	12
<i>Erlinger v. United States</i> , 602 U.S. 821 (2024).....	19
<i>FCC v. Fox Television Stations, Inc.</i> , 567 U.S. 239 (2012).....	14
<i>FCC v. Prometheus Radio Project</i> , 592 U.S. 414 (2021).....	8
<i>Free Enterprise Fund v. Public Co. Accounting Oversight Board</i> , 561 U.S. 477 (2010).....	12
<i>Hewitt v. United States</i> , 606 U.S. 419 (2025).....	23
<i>Koontz v. St. Johns River Water Management District</i> , 570 U.S. 595 (2013).....	20

<i>McElrath v. Georgia</i> , 601 U.S. 87 (2024)	20
<i>McPherson v. Blacker</i> , 146 U.S. 1 (1892)	18
<i>Monge v. California</i> , 524 U.S. 721 (1998)	20
<i>National Rifle Association of America v. Vullo</i> , 602 U.S. 175 (2024)	20
<i>PDR Network, LLC v. Carlton & Harris Chiropractic, Inc.</i> , 588 U.S. 1 (2019)	12
<i>Sackett v. EPA</i> , 566 U.S. 120 (2012)	7
<i>SEC v. Jarkesy</i> , 603 U.S. 109 (2024)	2, 19, 23
<i>Snyder v. United States</i> , 603 U.S. 1 (2024)	13
<i>Spokeo, Inc. v. Robins</i> , 578 U.S. 330 (2016)	22
<i>Sprint Corp. v. FCC</i> , 151 F.4th 347 (D.C. Cir. 2025)	6
<i>Trinity Lutheran Church of Columbia, Inc. v. Comer</i> , 582 U.S. 449 (2017)	20

<i>United States v. Louis</i> , 2006 WL 4835921 (M.D. Fla. Sept. 8, 2006)	17
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024)	18
<i>United States v. Turkette</i> , 452 U.S. 576 (1981)	22
Constitutional Provisions	
U.S. Const. amend. VII	18, 21, 22, 23
Statutes	
5 U.S.C. § 702	25
28 U.S.C. § 2462	3, 9
47 U.S.C. § 151	8
47 U.S.C. § 214	8
47 U.S.C. § 224	8
47 U.S.C. § 301	8
47 U.S.C. § 302a	9
47 U.S.C. § 303	8, 9
47 U.S.C. § 307	8
47 U.S.C. § 312	8
47 U.S.C. § 316	8

47 U.S.C. § 402	3
47 U.S.C. § 503	5, 16, 22
47 U.S.C. § 504	2, 3, 4, 6, 23, 24
Pub. L. No. 73-416, 48 Stat. 1064 (1934).....	17
Regulations and Administrative Materials	
17 C.F.R. § 229.103	16
<i>Application of Om Sai Broadcasting, LLC for Consent to Transfer of Control, Order, 2025 WL 3470907 (rel. July 15, 2025)</i>	11
<i>Applications of Fifth St. Enterprises., LLC, for Renewal of Licenses of Class A TV Stations, Order, 2026 WL 208681 (rel. Jan. 21, 2026)</i>	11
<i>Corr Wireless Communications LLC, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd. 5419 (2009)</i>	11
<i>Enforcement Bureau Provides Guidance for Renewal Hold Checks, Public Notice, 35 FCC Rcd. 2888 (2020).....</i>	10
<i>Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Report and Order and Order on Proposed Modification, 35 FCC Rcd. 2343 (2020)</i>	10

<i>Forfeiture Policy Statement</i> , 12 FCC Rcd. 17087 (1997).....	9, 11
<i>Infinity Radio Operations, Inc.</i> , Order on Reconsideration, 20 FCC Rcd. 4028 (2005).....	11
<i>Process Reform for Executive Branch Review of Certain FCC Applications & Petitions Involving Foreign Ownership</i> , Second Report and Order, 36 FCC Rcd. 14848 (2021).....	16
<i>Review of Foreign Ownership Policies</i> , Report and Order, 2026 WL 297818 (rel. Jan. 30, 2026)	10
<i>Sinclair Broadcast Group, LLC</i> , <i>Applications for Renewal of License & Pending Matters</i> , Order, 2025 WL 1915893 (rel. June 27, 2025)	11
<i>Steve Kramer</i> , Forfeiture Order, 39 FCC Rcd. 11229 (2024).....	15
Other Authorities	
Declaration of Independence (U.S. 1776)	19

Holly Ramer, *New Hampshire Jury Acquits Consultant Behind AI Robocalls Mimicking Biden on All Charges*, Associated Press (June 13, 2025), <https://tinyurl.com/4k4m5rkb> 15

Preserve, Noah Webster, A Compendious Dictionary of the English Language (1806)..... 19

Press Release, FCC Fines AT&T, Sprint, T-Mobile, and Verizon Nearly \$200 Million For Illegally Sharing Access To Customers' Location Data (Apr. 29, 2024), <https://tinyurl.com/3p35z8sw> 14

Rashard Rose & Marshall Cohen, *Political Consultant Behind Fake Biden AI Robocall Faces Charges in New Hampshire*, CNN (May 23, 2024), <https://tinyurl.com/2tccsedn> 15

INTRODUCTION AND INTEREST OF *AMICI CURIAE*¹

Amici and their members collectively constitute virtually the entire United States communications sector. CTIA – The Wireless Association represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life, including wireless providers, device manufacturers, suppliers, as well as application and content companies. NCTA – The Internet & Television Association represents the cable industry, whose advanced broadband networks deliver high-speed internet access, cable television, voice, wireless, and other innovative services to consumers and businesses throughout the United States. USTelecom – The Broadband Association represents service providers and suppliers for the communications industry—including providers of broadband, voice, data, and video over wireline and wireless networks—serving consumers and businesses across the country.

Amici's members do business before the FCC every day. They thus know better than anyone that when the FCC brings an enforcement action against you, there is no meaningful opportunity to defend yourself before a jury of your peers.

The Government relies on a fiction to argue

¹ No party's counsel authored this brief in whole or in part. None of the parties or their counsel, nor any other person or entity, other than *amici*, their members, or their counsel, made a monetary contribution to fund the brief's preparation or submission.

otherwise. It claims that when the FCC serves you with an order declaring you a lawbreaker and ordering you to pay, you may simply ignore it; you “need not pay the penalty unless the United States files a suit to collect it.” AT&T Pet. 10. In that subsequent collection proceeding, the Government says, you are free to “demand a jury trial.” *Ibid.*

The problem is that this jury trial is entirely illusory. Every party with significant business before the FCC—including *amici*’s members—knows that there is no real option to default on a forfeiture order. Doing so triggers an avalanche of consequences, the whole point of which is to render nonpayment functionally impossible. But under the statute, nonpayment is the *only* path to a jury. 47 U.S.C. § 504(a). The result is that there is no such path at all.

This Court should not condone a jury right that exists only on paper. To do so would make a mockery of the Bill of Rights and authorize a trivially easy end-run around this Court’s teaching that Congress cannot “concentrate the roles of prosecutor, judge, and jury in the hands of the Executive Branch.” *SEC v. Jarkesy*, 603 U.S. 109, 140 (2024). The Court should hold that the enforcement provisions of the Communications Act, as written, violate the Seventh Amendment and Article III.

SUMMARY OF ARGUMENT

The facts of these related cases are not in dispute. The FCC, without any involvement by a jury, concluded that each of the nation’s largest wireless telecommunications providers violated the

Communications Act. It issued each of those providers essentially identical forfeiture orders that declared them lawbreakers and ordered them each to pay tens of millions of dollars in civil penalties.

After the FCC imposed its forfeitures, the providers ostensibly had two options to challenge the legal merits of the FCC's orders. The first—and, in reality, only—option is the one they took: pay the forfeiture order and petition for its review under the Hobbs Act, which vests jurisdiction in the Courts of Appeals. *See* 47 U.S.C. § 402(a); *AT&T Corp. v. FCC*, 323 F.3d 1081, 1083–85 (D.C. Cir. 2003). Of course, no jury trial is available under this option.

The second option exists only on paper. In theory, the providers could have defied the FCC's forfeiture orders and defaulted on their collective hundreds of millions of dollars of debts to the FCC. That would have then triggered a five-year statute of limitations, 28 U.S.C. § 2462, for the Department of Justice (“DOJ”) to decide in each instance whether to initiate “a civil suit ... for the recovery of [the Commission's] forfeiture,” 47 U.S.C. § 504(a). Only then, if DOJ initiated such a collection suit, could the provider demand a jury trial. *Ibid.*

The Government claims this second option satisfies the Seventh Amendment and Article III because it gives forfeiture targets an opportunity to demand a jury trial. The Government is wrong.

As *amici*'s members know firsthand, the option for a jury trial under Section 504 of the Communications Act is an illusion. To access that jury trial, an enforcement target must first (i) submit to years of

proceedings before the FCC (here, it took four), (ii) defy their powerful regulator's demand for payment, and (iii) wait up to five years for DOJ to bring a collection suit (if it ever does). All the while, the enforcement target must operate with a large debt hanging over its head, along with the specter of being publicly branded a lawbreaker.

Both legal and practical consequences confirm what is obvious from the structure of this after-the-fact jury trial: it is not a meaningful option at all. Indeed, the Commission has implemented policies to ensure that parties do not default on their debt and therefore are never subject to the jury-trial provision in the Communications Act. For example, the agency often subjects delinquent parties to enforcement holds and thus refuses to process routine matters like license renewals—effectively cutting these parties off from the day-to-day government services they need to run their business in a highly regulated industry. Similarly, the agency routinely and explicitly uses the “facts” of unpaid forfeiture orders (never presented to a jury) as a basis to increase penalties in subsequent proceedings—subjecting a party to irreparable dollars-and-cents harms while they wait for DOJ to bring a collection suit—if it ever does.

Then there are the practical consequences. FCC forfeiture orders tarnish their targets' reputations by publicly declaring their targets lawbreakers. Forfeiture orders also impose debts immediately “payable into the Treasury,” 47 U.S.C. § 504(a), that trigger a slew of reporting requirements and that can make it difficult for businesses to access credit, close transactions, obtain insurance, and allocate limited resources.

Because these consequences render specious Section 504’s jury-trial option, the Communications Act’s enforcement scheme is unconstitutional.

As the providers note, the enforcement scheme is also unconstitutional for an independent reason: a Section 503 forfeiture proceeding is a distinct “Suit at common law” that requires a jury and so cannot be salvaged by a jury in a separate Section 504 collection suit. And even if the Court considers forfeiture and collection to comprise a single suit, the scheme is still unconstitutional because it vests the Government—not the defendant—with discretion to invoke a trial by jury, even as it imposes irreparable consequences.

For these reasons, the Court should affirm the Fifth Circuit and reverse the Second Circuit.

ARGUMENT

I. THE COMMUNICATIONS ACTS ENFORCEMENT MECHANISM IS UNCONSTITUTIONAL BECAUSE IT AUTHORIZES CIVIL PENALTIES WITHOUT ANY MEANINGFUL OPPORTUNITY FOR A JURY TRIAL.

The Communications Act gives the FCC sweeping authority to penalize regulated parties using monetary forfeitures of essentially unlimited size. *See* 47 U.S.C. § 503. In this case, for example, the FCC claimed that it had discretion to “impos[e] ... a penalty in the *hundreds of trillions*” against the providers. Verizon Pet. App. 32a (emphasis added). Despite the potential for such absurd penalties, the FCC’s decisions are not reviewed by a jury. They are made

entirely in-house. And while there is a hypothetical possibility that a jury *could* review such decisions in a backend collection proceeding, *see* 47 U.S.C. § 504(a), the Communications Act makes that functionally impossible. That option thus falls far short of the jury-trial right guaranteed by the Seventh Amendment and Article III.

Start by considering what is not in dispute. The Government concedes that where, as here, “the FCC seeks a forfeiture penalty to enforce Section 222 of the [Communications] Act,” that agency proceeding “is a suit at common law” that triggers the right to a jury trial. AT&T Pet. 7. And when the FCC seeks a forfeiture, the Communications Act empowers the agency—without any jury—to “f[i]nd the facts, interpret[] the law, adjudge[] guilt, and lev[y] punishment.” AT&T Pet. App. 21a. A party can choose to pay the forfeiture and challenge the order in the Courts of Appeals, as AT&T and Verizon did here. But a jury trial is available *only if* the forfeiture target defaults on the FCC’s forfeiture *and* DOJ chooses to bring a lawsuit to collect that debt in federal court. 47 U.S.C. § 504(a).

Thus, a fundamental premise of the Government’s argument is that FCC forfeiture orders are mere suggestions to pay—that anyone subject to a forfeiture order has a Bartleby-esque “right to ‘do nothing at all.’” *Sprint Corp. v. FCC*, 151 F.4th 347, 361 (D.C. Cir. 2025). After all, DOJ can bring a collection suit—and thus trigger the option for a jury trial—only after “a forfeiture [is] imposed” by the FCC and the forfeiture target refuses to pay. 47 U.S.C. § 504(a). So a real opportunity for a jury trial exists only if it is possible for an enforcement target to refuse

to pay.

It is not. For both legal and practical reasons, forfeiture targets are compelled to pay their debts long before they are ever subject to a collection proceeding.

A. Legal Consequences Foreclose A Meaningful Opportunity For A Jury Trial.

The FCC does not issue forfeiture *requests*. The orders here prove the point. They provide in no uncertain terms, “**IT IS ORDERED** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission’s rules, 47 CFR § 1.80, [the provider] **IS LIABLE FOR A MONETARY FORFEITURE.**” Verizon Pet. App. 138a; AT&T Pet. App. 131a (emphases in original). They then instruct that “[p]ayment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission’s rules within thirty (30) calendar days after the release of this Forfeiture Order.” Verizon Pet. App. 139a; AT&T Pet. App. 131a. As one might expect, when the Government serves a company with a document entitled “Order,” branding it a lawbreaker and ordering it to pay millions by a date certain, the company has “little practical alternative but to dance to the [FCC]’s tune.” *Sackett v. EPA*, 566 U.S. 120, 132 (2012) (Alito, J., concurring).

Amici’s members know firsthand the practical realities of dealing with a powerful regulator. They do business with the FCC every day. They depend on the FCC for licenses, authorizations, waivers, and countless other day-to-day actions—all of which are necessary for communications companies to serve their customers. And they understand that when the

FCC *orders* them to pay penalties for violating the law, that is no mere suggestion. Leaving a forfeiture order unpaid—the prerequisite to exercising the supposed jury-trial right under Section 504—triggers crushing consequences that make it functionally impossible to demand a jury.

Those consequences stem from the FCC’s role as the sole national regulator of interstate communications by wire or radio. 47 U.S.C. § 151. The agency exercises broad sectoral authority over nearly every form of modern interstate communication—from wireless, fiber, and satellite to broadcast television and submarine cables. *See, e.g.*, 47 U.S.C. § 214. A common strand in all of these powers is the FCC’s “broad authority to regulate ... in the public interest.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 416 (2021).

Those powers cover the waterfront of modern communications. For example, nobody can use radio spectrum—a necessity for *any* wireless communication—without an FCC license or authorization. *See* 47 U.S.C. § 301. The Commission has exclusive authority to issue spectrum licenses to private parties, 47 U.S.C. § 307(a), to impose all manner of conditions on those licenses, *id.* § 303(r), to modify or revoke them, *id.* §§ 316, 312(a), to limit the term of a license and subject it to renewals, *id.* § 307(c)–(d), and everything in between, including allocating which spectrum can be used by unlicensed devices, like WiFi and Bluetooth, *see generally id.* § 303. The FCC also exercises authority over physical communications infrastructure. *See, e.g., id.* §§ 224, 303(d). And it has broad authority over any device that emits radiofrequency energy, which, as a

practical matter, means that every single new electronic device in the country must pass Commission scrutiny. *Id.* §§ 302a, 303(e).

Under this scheme, parties under the FCC's thumb have no option to defy the agency's demand for forfeiture penalties while they await a possible collection suit. The FCC denies that it uses forfeiture orders themselves to parties' detriment prior to collection, but it maintains a policy that achieves the same outcome. It claims authority to "use the facts underlying a violation" adjudicated in an uncollected forfeiture "in a subsequent proceeding." *Forfeiture Policy Statement*, 12 FCC Rcd. 17087, ¶ 33 (1997) ("Forfeiture Policy Statement"). By using these "facts"—in reality, assertions by the agency that were never found or reviewed by a jury—in unrelated subsequent proceedings, the agency can impose significant consequences. Because of the FCC's broad powers, the five-year statute of limitations for forfeiture collection actions, 28 U.S.C. § 2462, and the risk that the FCC could continue to rely on those "facts" even if a collection action is never brought, those vast consequences of indefinite duration make it functionally impossible for a forfeiture target to refuse to pay.

Consider a concrete example. The Commission claims authority to use the so-called "facts" underlying an unpaid forfeiture to pause consideration of applications to renew licenses—routine filings that are otherwise granted as a matter of course. *See Forfeiture Policy Statement*, ¶ 34 (claiming authority to use "underlying facts" of unpaid forfeiture "against a licensee in a subsequent renewal"). Indeed, it is official FCC policy to place

“enforcement holds” while “a licensee or its stations ... remain under investigation.” *Enft Bureau Provides Guidance for Renewal Hold Checks*, Public Notice, 35 FCC Rcd. 2888, 2888 (2020). “While such an enforcement hold is in place,” the agency will not act on “renewal application[s]” and other routine matters. *Ibid.*; *accord Rev. of Foreign Ownership Pol’ys*, Report and Order, 2026 WL 297818, ¶ 27 & n.107 (rel. Jan. 30, 2026) (documenting practice of “plac[ing] a hold on certain types of applications while a broadcast licensee is subject to an investigation”).

These enforcement holds have serious bite. By subjecting a party to a forfeiture order and then freezing license renewals while the fine remains unpaid, the FCC effectively cuts a company out of the routine regulatory business managed by the agency for up to half a decade (or even indefinitely). In the wireless context, such a hold could place in limbo spectrum worth billions of dollars, often accompanied by additional billions in infrastructure investment. *See generally Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order on Proposed Modification, 35 FCC Rcd. 2343 (2020) (authorizing auction for mid-band spectrum valued in the tens of billions). And it is not just spectrum. Parties require FCC approval for a wide variety of activities. Facing years with billions of dollars in assets in purgatory and/or the risk of stranded investments, a forfeiture target has no real choice but to pay its debt.

Enforcement holds on renewals are only one arrow in the FCC’s quiver. Again, under the guise of using jury-free “facts,” the FCC claims authority to cite unpaid forfeiture orders in subsequent enforcement proceedings “as a basis for a higher

forfeiture.” Forfeiture Policy Statement ¶ 35. That is, the agency uses “unpaid, unadjudicated forfeiture order[s]” from “previous proceeding[s]” to drive up penalty amounts in subsequent unrelated forfeiture proceedings. *Infinity Radio Operations, Inc.*, Order on Reconsideration, 20 FCC Rcd. 4028, ¶¶ 1, 7 (2005); *see also, e.g., Corr Wireless Commc’ns LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd. 5419, ¶ 7 & n.24 (2009) (calculating proposed forfeiture using, *inter alia*, “prior unpaid” forfeiture “in an unrelated matter”). Thus, even absent a collection proceeding, parties face higher penalties as a direct result of the FCC’s imposition of a forfeiture.

Because of these policies, it is common for the FCC to leverage routine licensing matters as a means to resolve unrelated enforcement actions. For example, the Commission has granted run-of-the-mill license renewals only after approving consent decrees where the licensee agrees “to make a voluntary contribution to the United States treasury” for alleged rule violations, including those alleged in unpaid forfeiture orders. *E.g., Applications of Fifth St. Enters., LLC, for Renewal of Licenses of Class A TV Stations*, Order, 2026 WL 208681, ¶ 2 (rel. Jan. 21, 2026); *see also Sinclair Broad. Grp., LLC, Applications for Renewal of License & Pending Matters*, Order, 2025 WL 1915893, ¶¶ 1–2 (rel. June 27, 2025) (accepting \$500,000 Treasury contribution to resolve “NAL and Forfeiture Order” in connection with “grant of ... Renewal Applications” (emphasis omitted)). The Commission also conditions the transfer of licensed stations on payment to the Treasury for alleged violations that occurred “prior to the filing of the Application” for transfer. *Application of Om Sai Broad., LLC for Consent to Transfer of Control*, Order,

2025 WL 3470907, ¶¶ 1–3 (rel. July 15, 2025). The list could go on. The point is that the agency uses routine regulatory matters as a bargaining chip to extract payment for outstanding forfeiture orders.

The consequences of nonpayment are not limited to the Commission’s formal policies. Every regulated party knows the folly in openly defying its regulator. The administrative state “now wields vast power and touches almost every aspect of daily life.” *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 499 (2010). Nowhere is that more true than in the communications industry, which depends on government licenses and authorizations to operate. The FCC’s discretionary, often near-plenary, authority over the communications sector means that most parties before it are repeat players with virtually every aspect of their business affected in some way by the agency. The FCC controls everything from routine matters like license renewals and pro forma transfers of control, to issues that can impact the very core of a company’s business like the ability to merge with another company and regulatory compliance.

Within these matters, the agency has broad discretion to act or to stay its hand. It can influence the merits by granting or denying a party’s requested relief. Or it can proceed more subtly by simply choosing which matters to prioritize—and which to leave fallow. Many of these day-to-day decisions by the agency—e.g., whether or not to put a given application on public notice or to initiate a rulemaking—can cause serious consequences while remaining shielded from judicial review. *See, e.g., Bennett v. Spear*, 520 U.S. 154, 177–78 (1997); *PDR Network, LLC v. Carlton & Harris Chiropractic, Inc.*,

588 U.S. 1, 25 (2019) (Kavanaugh, J., concurring) (explaining that “judicial review of [an] agency’s discretionary decision to decline to take new action” is “illusory”).

Parties that practice before the FCC thus know better than to refuse to comply with the agency’s orders. At best, such defiance will undermine a company’s relationship with a powerful regulator. At worst, it creates the possibility for reprisals or the appearance thereof. The bottom line is that an unpaid forfeiture order can make it impossible to do business before the FCC—and thus impossible for a communications company to do business at all.

Even if the FCC were to disclaim any (or all) of these policies, it would not change the outcome. In addition to the practical consequences outlined below, the sheer power imbalance between regulated parties and the agency would lead to coercion against parties that dare to exercise their right to a jury trial. Indeed, “as this Court has said time and again,” it cannot grant government enforcers unchecked discretion based on promises of “reponsib[le]” implementation. *Snyder v. United States*, 603 U.S. 1, 17 (2024).

At bottom, the Communications Act’s enforcement regime is a system that leaves regulated parties with no real choice but to pay their forfeitures without any opportunity to demand a jury.

B. Practical Consequences Foreclose A Meaningful Opportunity For A Jury Trial.

In addition to legal consequences, a slew of real-world, collateral consequences make it impossible to

defy a forfeiture order's demand for payment, wait for a collection proceeding (if one ever comes), and eventually demand a jury trial.

First, consider the reputational damage. This Court has recognized that the FCC's "findings of wrongdoing can result in harm to a [party]'s reputation." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 256 (2012). That "observation is hardly surprising given that [forfeiture] orders, which are contained in the permanent Commission record," often "describe in strongly disapproving terms" violations alleged by the Commission. *Ibid.* Those allegations are, in turn, "widely publicized" and can of course harm a party's standing with its customers and the broader business community. *See ibid.*; *see also* AT&T Pet. App. 21a.

The harm to a party's reputation is all but ensured by the FCC's public characterizations of its forfeiture orders. To be sure, the agency's *briefing* calls its forfeiture orders "initial decision[s]," "initial assessment[s]," and even an "extra layer of protection" for enforcement targets. AT&T Pet. 2, 10, 11. Yet, in its *public communications* announcing the forfeiture orders at issue in this case, the FCC adopted a very different tone, declaring that it had "resolve[d] these cases" and "h[eld] ... [the] carriers accountable." Press Release, FCC Fines AT&T, Sprint, T-Mobile, and Verizon Nearly \$200 Million For Illegally Sharing Access To Customers' Location Data (Apr. 29, 2024), <https://tinyurl.com/3p35z8sw>. The FCC Chairwoman asserted an "ugly practice" that "violates the law." AT&T Pet. App. 136a. And the forfeiture orders themselves all "conclude" that the target entities "willfully and repeatedly violated" the

Communications Act, stating finally and unequivocally that “**IT IS ORDERED** that” those entities are “**LIABLE FOR A MONETARY FORFEITURE**” in the amount specified in the respective orders. *See, e.g.*, Verizon Pet. App. 138a; AT&T Pet. App. 131a. Nowhere in these statements did the agency characterize the supposed violations as *alleged* or *initial*—much less, as a procedural *protection* for the providers. To the contrary, a lay observer would have assumed that the guilt of the targets had been fully and finally adjudged.

None of that is unique to this case. The FCC routinely tarnishes enforcement targets’ reputations by touting as fact the allegations in its forfeiture orders. For example, in one recent order, the agency declared without qualification that a man placed telephone calls to “deceive voters and interfere with an election.” *Steve Kramer*, Forfeiture Order, 39 FCC Rcd. 11229, ¶ 44 (2024) (“increas[ing] penalty” on this basis). The press ran with the story, quoting the then-Chairwoman of the FCC as saying the enforcement target sought to “defraud voters.” Rashard Rose & Marshall Cohen, *Political Consultant Behind Fake Biden AI Robocall Faces Charges in New Hampshire*, CNN (May 23, 2024), <https://tinyurl.com/2tccsedn>. But in a subsequent criminal jury trial arising from the same calls, the man “was acquitted” on all charges and deemed not guilty “of voter suppression and impersonating a candidate.” Holly Ramer, *New Hampshire Jury Acquits Consultant Behind AI Robocalls Mimicking Biden on All Charges*, Associated Press (June 13, 2025), <https://tinyurl.com/4k4m5rkb>. The FCC thus wrongly accused someone of election interference, and he was only able to clear his name before a jury of his peers

in a separate criminal proceeding.

Forfeiture targets are also generally subject to an array of reporting obligations that are triggered by the FCC's orders. The statute provides that the subject of a forfeiture order is immediately "liable to the United States." 47 U.S.C. § 503(b)(1). Thus, a forfeiture order is reportable to regulators like any other sizable debt. For example, in certain circumstances, public companies may be required to report the forfeiture order to the Securities and Exchange Commission and the investing public. *See* 17 C.F.R. § 229.103. And companies subject to "Team Telecom" review—i.e., Executive Branch review of FCC matters involving foreign ownership—must report "any criminal, administrative, or civil penalties for violating the regulations of the FCC." *Process Reform for Exec. Branch Rev. of Certain FCC Applications & Petitions Involving Foreign Ownership*, Second Report and Order, 36 FCC Rcd. 14848, Attach. A, Question 12 (2021).

Then there are the day-to-day business consequences. Anyone who has run a business knows that an outstanding debt—particularly, as here, one in the tens of millions—can have a tangible impact on operations. For example, it can be difficult to access credit or raise capital when faced with seven- or eight-figure outstanding liabilities. So too with obtaining insurance or closing transactions. A business will also face significant opportunity costs with the forfeiture order hanging as a Sword of Damocles over its head for up to five years. To ensure adequate funds to cover that liability, a business may be forced to forgo new lines of business, investment in new equipment, or pay raises for employees.

Collectively, these practical consequences make it impossible for forfeiture targets to simply sit and wait for DOJ to bring a collection suit—the only means by which they could ever defend themselves before a jury of their peers.

C. The Data Confirms There Is No Meaningful Opportunity For A Jury Trial.

Because of these legal and practical barriers, the Communications Act’s jury trial exists only on paper.

The data bears this out. The Communications Act has provided for Section 504 collection suits since its passage in 1934. *See* Pub. L. No. 73-416, § 504, 48 Stat. 1064, 1101. Yet, upon a review of Section 504 collection suits identifiable on major legal-research platforms, *amici* did not find a single jury trial in the history of the statute. *See also* Providers’ Br. 10 (noting “no Section 504 jury trial has occurred” since at least 1978). And when such suits are brought, they overwhelmingly involve one-off bad actors, for whom the above-described consequences of defaulting on a forfeiture order are not meaningful. Collection suits against the individuals and companies that legitimately operate under the FCC’s regulatory authority are virtually unheard of.

The resolution of these cases reflects that reality. By *amici*’s count, about 90% of all Section 504 collection suits are decided without an adversarial procedure—often on default judgment—reflecting the unsophisticated nature of the defendants that decline to pay forfeitures. *See, e.g., United States v. Louis*, 2006 WL 4835921 (M.D. Fla. Sept. 8, 2006) (issuing default judgment against individual for operating

pirate radio station).

All of this confirms *amici*'s experience. Agency-level forfeiture orders are not mere suggestions. They are real orders that carry real consequences and compel the payment of real money—all without a jury trial.

D. Without A Meaningful Opportunity For A Jury Trial, The Statute's Enforcement Scheme Is Unconstitutional.

The Government agrees that, under *Jarkesy*, “a case in which the FCC seeks a forfeiture penalty to enforce Section 222 of the Act is a suit at common law” and thus triggers the Seventh Amendment’s right to a jury trial. AT&T Pet. 7; Providers’ Br. 24–31. The only question then is whether the Government can satisfy the Seventh Amendment with a collection-action jury trial that exists on paper but that is fanciful in the real world. It cannot.

First, that approach violates the plain text and history of the Seventh Amendment. Start with the text. “The first and most important rule in constitutional interpretation is to heed the text—that is, the actual words of the Constitution—and to interpret that text according to its ordinary meaning as originally understood.” *United States v. Rahimi*, 602 U.S. 680, 715 (2024) (Kavanaugh, J., concurring); accord *McPherson v. Blacker*, 146 U.S. 1, 27 (1892).

The text of the Seventh Amendment is clear. The “trial by jury” is a “*right*” and it “*shall be preserved*.” U.S. Const. amend. VII (emphases added). A “right,” as used by the framers, was something fundamental

and “unalieanable” that existed independent of “Governments ... instituted among men.” Declaration of Independence ¶ 2. And “shall be preserved” could not be clearer: the accused cannot be deprived of a jury. See *Preserve*, Noah Webster, *A Compendious Dictionary of the English Language* (1806) (“to keep, save, defend”).

The Communications Act’s enforcement scheme makes a mockery of this text. A jury trial that exists only behind an immovable mountain of extrajudicial bureaucracy is not a “right.” And if an array of consequences prevents enforcement targets from ever accessing a jury, then that option has not been “preserved.”

The history is in accord. Under British rule, “authorities directed more and more cases to vice-admiralty courts where crown-appointed judges, rather than local juries, decided the defendant’s fate.” *Erlinger v. United States*, 602 U.S. 821, 829 (2024). That is why, “[w]hen the smoke settled, the American people went to great lengths to prevent a backslide toward anything like the vice-admiralty courts.” *SEC v. Jarkesy*, 603 U.S. 109, 148 (2024) (Gorsuch, J., concurring).

The FCC’s forfeiture scheme is exactly the sort of backslide the Seventh Amendment was designed to prevent. Indeed, imagine if the Crown had sought to appease colonists using the scheme here. It could have forced cases into vice-admiralty courts where colonists were deemed lawbreakers and ordered to pay massive sums to the British government. Then, after declaring the defendant a lawbreaker and a debtor to the Crown—rendering them a *persona non*

grata among the local business community—colonial officials could have withheld valuable business licenses until the defendant paid his debt. Were that not enough, those officials would then have had the sole discretion over whether to bring *another* suit to collect any outstanding debt, years after the damage had already been done. It strains credulity to suggest that the founders would have tolerated such a scheme after fighting a war to end similar abuses.

Second, a jury-trial option that exists in name only runs afoul of this Court’s teaching that constitutional rights turn on “substance over labels.” *McElrath v. Georgia*, 601 U.S. 87, 96 (2024). After all, “[i]f the protections extended ... by the Bill of Rights c[ould] be ... easily circumvented,” they “would be, to borrow a phrase from Justice Field, ‘vain and idle enactments, which accomplished nothing, and most unnecessarily excited Congress and the people on their passage.’” *Monge v. California*, 524 U.S. 721, 738 (1998) (Scalia, J., dissenting) (alterations accepted) (quoting *Slaughter-House Cases*, 83 U.S. 36 (1872)).

As part and parcel of this principle, the Government may not “coerc[e] people into giving ... up” “the Constitution’s enumerated rights.” *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013). That includes “indirect coercion or penalties”—“not just outright prohibitions.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 463 (2017). Thus, where the Government threatens “legal sanctions and other means of coercion” to “suppress[]” the exercise of an enumerated right, its actions are unconstitutional. *Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 180

(2024). So too when the Government forces a party to give up another valuable right—such as the opportunity for a direct appeal. *See* Providers’ Br. 42.

The Communications Act’s enforcement scheme runs afoul of these principles because the statute operates in a manner that functionally coerces enforcement targets into not exercising their right to a jury trial.

II. THE COMMUNICATIONS ACT’S ENFORCEMENT MECHANISM IS UNCONSTITUTIONAL BECAUSE IT DOES NOT GUARANTEE A JURY TRIAL DURING THE RELEVANT SUIT AT COMMON LAW.

The Communications Act cannot satisfy the Seventh Amendment and Article III because the jury-trial right it offers is specious. But even if this Court disagrees, the statute is unconstitutional for two additional reasons: (i) a backend collection proceeding is not part of the “Suit at common law” that triggers the jury-trial right, and (ii) because the Communications Act vests DOJ with sole discretion over whether to bring a collection suit, it does not “preserve[]” a “right” to a jury trial. U.S. Const. amend. VII.

A. The Statute Is Unconstitutional Because Forfeiture Proceedings Are Distinct Suits At Common Law.

As the providers explain (at 31–34), the existence of a potential Section 504 collection suit cannot remedy the deprivation of a jury trial in an FCC forfeiture proceeding because that subsequent suit

would be its own distinct “Suit[] at common law.” U.S. Const. amend. VII.

The text of the Communications Act is the best evidence of which proceedings constitute the relevant “suit.” While this case concerns a constitutional question rather than a statutory one, the two inquiries are deeply interrelated. The Seventh Amendment requires a jury trial for each “Suit” at common law, and Congress is “the genesis of ... causes of action” to bring such suits. *Alexander v. Sandoval*, 532 U.S. 275, 286–87 (2001). Indeed, as this Court has recognized in the Article III standing context, how Congress defines a cause of action is “instructive and important” for assessing constitutional cognizability. *See, e.g., Spokeo, Inc. v. Robins*, 578 U.S. 330, 340–41 (2016). And of course, “[t]he language of the statute ... [is] the most reliable evidence of [Congress’s] intent.” *United States v. Turkette*, 452 U.S. 576, 593 (1981).

Here, the statutory text makes clear that FCC forfeiture proceedings and DOJ collection proceedings are distinct “Suits at common law.” Start with Section 503. That provision instructs that a party “shall be liable to the United States for a forfeiture penalty” “as determined by the Commission.” 47 U.S.C. § 503(b)(1). At that point, the party is deemed a “violator,” and the only remaining question is “the amount of any forfeiture penalty,” *id.* § 503(b)(2)(A)–(C), to be determined by the Commission, *id.* § 503(b)(2)(E). After the penalty amount is “determined” by the Commission and the forfeiture is “imposed under” Section 503(b), it “shall be recoverable pursuant to section 504(a).” *Id.* § 503(b)(4). In other words, the FCC—and only the

FCC—has authority to deem a party a “violator,” “determine” the appropriate penalty, and “impose” a forfeiture. Together, these actions mark the culmination of a suit in which “the Commission act[s] as prosecutor, jury, and judge.” AT&T Pet. App. 20a.

Section 504 affirms that collection proceedings are a new suit. That provision provides for a “civil suit” to collect a “forfeiture” that has already been “*imposed*.” 47 U.S.C. § 504(a) (emphasis added). That past-tense wording—present in both Sections 503 and 504—makes clear that Congress deemed the imposition of civil penalties complete upon the issuance of a forfeiture order. *See Hewitt v. United States*, 606 U.S. 419, 427 (2025) (“Congress’ use of a verb tense is significant in construing statutes”). Further, the collection proceeding is brought by a different part of the federal government (“the various United States attorneys”) in a different venue (district court) as a means to recover a forfeiture that was already deemed “payable into the Treasury of the United States.” 47 U.S.C. § 504(a). Were that not clear enough, Congress expressly styled this cause of action as a new “civil *suit*.” *Ibid.* (emphasis added).

Thus, Congress—the creator of the enforcement scheme and the Government’s cause of action—could not have made its intent clearer: Section 504 collection proceedings are distinct “Suit[s] at common law.” U.S. Const. amend. VII.

Because the issuance of a forfeiture order marks the completion of the “initial adjudication,” *Jarkesy*, 603 U.S. at 128, the relevant suit at common law ends before any Section 504 collection action begins. “A proceeding that has already happened cannot be

undone”—and so a subsequent collection suit (if the government ever chooses to bring it) cannot remedy the FCC’s prior “illegitimate proceeding” and its “unconstitutionally structured decisionmaking process.” *Cf. Axon Enter., Inc. v. FTC*, 598 U.S. 175, 191–92 (2023).

B. The Statute Is Unconstitutional Because It Does Not Guarantee A Jury Trial.

Even if the Court were unsure about whether the Section 504 collection proceeding is a different “Suit at common law” from the Section 503 forfeiture proceeding, the enforcement scheme is still unconstitutional. That is because a Section 504 collection proceeding does not guarantee forfeiture targets access to a jury.

The reason is simple: Section 504 gives *the Government* complete discretion over whether to bring a collection action—the only means by which an enforcement target can get into a trial court and demand a jury. 47 U.S.C. § 504(a). If a jury is available only at the discretion of prosecutors, it is neither a “right” nor “preserved.”

It is no answer to claim, as the Government does, that “the regulated party need not pay the penalty unless the United States files a suit to collect it.” AT&T Pet. 10. As explained at length above, forfeiture orders—without any collection proceeding—impose immediate consequences. They place a stain on the target’s reputation and can make it impossible to do business for a slew of legal and practical reasons. *See supra* Section I.A–B. Those consequences result in immediate dollars-and-cents

injuries—such as when the agency refuses to issue or renew valuable licenses under an enforcement hold or when the target loses business due to reputational damage. And because Congress has generally not waived sovereign immunity for “money damages,” 5 U.S.C. § 702, those immediate injuries are forever unrecoverable. Thus, forfeiture orders, independent of collection, generate harms that are “impossible to remedy once the proceeding is over,” making any jury trial “too late to be meaningful.” *Axon Enterprise*, 598 U.S. at 191.

Because the Communications Act does not guarantee a right to a jury trial when the FCC imposes civil penalties, the statute’s enforcement scheme is unconstitutional.

CONCLUSION

The Court should affirm the Fifth Circuit and reverse the Second Circuit.

February 25, 2026

Respectfully Submitted,

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